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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

CARRIE JAFFEE AS SPECIAL ADMINISTRATOR FOR RICKY ALLEN, SR., DECEASED,
Petitioner,

v.

MARYLU REDMOND, HOFFMAN ESTATES POLICE OFFICER AND VILLAGE OF HOFFMAN ESTATES, ILLINOIS,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF THE AMERICAN PSYCHOANALYTIC ASSOCIATION, DIVISION OF PSYCHOANALYSIS (39) OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION, THE NATIONAL MEMBERSHIP COMMITTEE ON PSYCHOANALYSIS IN CLINICAL SOCIAL WORK, THE AMERICAN ACADEMY OF PSYCHOANALYSIS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Amici will address the following question:

1. Whether federal courts in a civil action should treat as privileged confidential communications made by a patient to a licensed clinical social worker in the course of psychotherapeutic treatment.

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INTEREST OF *AMICI CURIAE*

Amici are a consortium of organizations whose members are psychiatrists, psychologists, social workers and others who practice psychoanalysis and/or psychoanalytic psychotherapy, insight-based psychotherapies grounded in the principles and techniques first expounded by Sigmund Freud and developed and advanced over more than

75 years of clinical research by numerous psychoanalytic scholars. The American Psychoanalytic Association ("APsaA") is a professional organization of psychoanalysts throughout the United States. The Association is comprised of 40 affiliate societies and 29 training institutes in many cities and has about 3000 individual members. It is a regional association of the International Psychoanalytical Association. The Division of Psychoanalysis (39) is one of 49 divisions of the American Psychological Association. The greater than 3600 full members (not including student members) of Division 39 are psychologists interested in psychoanalysis, the overwhelming majority of whom practice psychoanalysis or psychoanalytic psychotherapy. The National Membership Committee on Psychoanalysis in Clinical Social Work ("NMCOP") is comprised of 500 clinical social workers who practice psychoanalysis and/or psychoanalytic psychotherapy. There are 13 area branches of the NMCOP in the United States. The NMCOP is affiliated with the National Federation of Societies for Clinical Social Work. The American Academy of Psychoanalysis is an organization of more than 800 psychiatrists (and some others who do not possess an M.D.) who have undergone extensive psychoanalytic training and practice psychoanalysis and psychoanalytic psychotherapy.

As a direct result of their extensive scholarly and clinical work in the areas of psychoanalysis and psychoanalytic psychotherapy, *Amici*'s members strongly believe that confidentiality is critical to the success of psychotherapeutic treatment. The recognition of a psychotherapist-patient privilege is, accordingly, of the utmost importance to *Amici's* members' ability successfully and ethically to practice their profession, and to the welfare of their patients. *Amici* therefore wish to present their views to assist the Court in deciding the present case.[1]

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[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' letters of consent have been filed with the Clerk of the Court.

BACKGROUND

Effective psychotherapy requires that the communications between a psychotherapist and a patient remain confidential. Petitioner mistakenly maintains that there is no need for such confidentiality. Indeed, petitioner asserts that disclosure of these communications results in "therapeutic benefits." Pet. Br. 29. Petitioner deems the asserted need for confidentiality a " 'counseling folklore.' " *Id.* at 26 (citation omitted).

Petitioner simply ignores the three ways in which confidentiality is critical to effective psychotherapy: (1) it enables individuals to obtain help in dealing with problems or feelings they may consider too shameful, troubling or socially embarrassing to share with family or friends; (2) it is critical to building the patient's trust in the psychotherapist and thereby fosters the "therapeutic alliance"; and (3) it is a critical prerequisite to full disclosure (or "free association"), the fundamental technique by which psychoanalysis and psychoanalytic psychotherapy accomplish their goals.

Petitioner's lack of understanding of psychotherapy leads her not only to denigrate the importance of confidentiality, but to overestimate the importance of patient-psychotherapist communications to the truth-seeking process of litigation. The full disclosure employed in psychoanalysis and psychoanalytic psychotherapy is not a process of identifying objective facts, but a technique designed to explore (through dreams, fantasies, etc.) unconscious factors that shape conscious thoughts or behavior. Psychoanalytic therapy thus gives rise to an extraordinarily intimate relationship in which patients divulge thoughts, feelings, dreams and fantasies that may have little correspondence to external reality. A fuller understanding of psychoanalysis and psychoanalytic psychotherapy, and the crucial importance of confidentiality to them, is essential to the Court's privilege analysis and to its analysis of patients' privacy rights.

1. Confidentiality enables individuals to obtain needed psychotherapy.

People generally seek out psychotherapy for help in dealing with those problems they experience as too shameful or troubling to be shared comfortably with family members, friends or co-workers. For example, a person who experienced unwanted sexual desires, or a law enforcement officer who experienced strong fears in the aftermath of a violent incident and did not want to disclose this to colleagues, might seek out psychotherapy for assistance in dealing with these concerns. In either of these instances and the myriad others that motivate people to seek such assistance, the public disclosure in court of the contents of the therapy would be embarrassing or even job-threatening. Indeed, given the social stigma still attached to the need for psychotherapy, public disclosure of the very fact that the individual had sought treatment might well prove detrimental.[2] See *Parham* v. *J.R.*, 442 U.S. 584, 600 (1979) (recognizing stigma associated with child who "has received psychiatric care"). In the absence of a privilege, many individuals will be deterred from seeking psychotherapy who currently do or might benefit from it. Thus, "[c]onfidentiality is essential for successful psychiatric treatment [for] [w]ithout it, patients would be hesitant to enter into a meaningful psychotherapeutic relationship." *Psychiatric Peer Review: Prelude and Promise* 175 (J. Hamilton ed., 1985).

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[2] For example, 55 percent of supervisors surveyed indicated that they would have a negative attitude towards an employee who had seen a psychiatrist. *See Psychiatric Peer Review: Prelude and Promise* 179 (J. Hamilton ed., 1985). The social stigma that attaches to those who seek psychotherapy is further evidenced by the fact that some patients forgo insurance coverage of their treatment rather than risk their employers finding out about it. *See* Statement of the American Psychiatric Association (by Jerome S. Beigler, M.D.) Before the Subcommittee on Government Information and Individual Rights of the Committee on Government Operations (Apr. 9, 1979).

2. Confidentiality is essential to the establishment of the "therapeutic alliance".

An important initial step in psychoanalysis and psychoanalytic psychotherapy is the establishment of a "therapeutic alliance." This consists of a positive working relationship between patient and therapist in which both commit to the common goal of furthering understanding of the patient's problems and conflicts. In a sound therapeutic alliance, the patient experiences trust, hopefulness with regard to the outcome of the treatment, and a willingness to cooperate with the rigors of therapeutic work. See 1 H. Kaplan & B. Sadock, *Comprehensive Textbook of Psychiatry* 470 (6th ed. 1995) ("*Textbook of Psychiatry*"). "No analysis can proceed without the formation of a rational, trusting therapeutic alliance." *Id.* at 1775.

Confidentiality is part of the core foundation for the building of the therapeutic alliance. Through it, the therapist demonstrates trustworthiness and concern first and foremost with the patient's well-being. Confidentiality is, accordingly, "a cornerstone of therapy; it is essential to the therapeutic alliance and setting which fosters the unfolding of the patient's problems and fantasies on every level." 1 R. Langs, *The Technique of Psychoanalytic Psychotherapy* 193 (1973). The possibility that a therapist might reveal in a court of law a patient's most troubling inner secrets would stand as a permanent obstacle to development of the necessary degree of patient trust in the therapist, and would pose a significant, and for many patients an insurmountable, barrier to effective treatment.

3. Without confidentiality psychotherapy would lose much of its efficacy.

A basic tenet of psychoanalytic therapy is that the patient should reveal to the therapist any thoughts, feelings, dreams, fantasies or sensations that come to mind during a treatment session, no matter how shameful or troubling the patient may find them to be. Thus, con-

fidentiality is also essential to psychoanalytic therapy because it enables patients fully to disclose their thoughts or feelings without fear of public disclosure.

Petitioner concedes this point with respect to "psychoanalysis," Pet. Br. at 27, acknowledging that psychoanalysts "require 'uncensored access to all of their patient's thoughts and feelings,' " and that confidentiality is accordingly essential to this discipline. *Id.* (quoting Shuman, Weiner & Pinard, *The Privilege Study (Part III): Psychotherapist-Patient Communications in Canada*, 9 Int'l J. of L. & Psychol. 393, 416 (1986)). Petitioner appears to believe, however, that such imperatives are not "common" in the field of psychotherapy, and that they apply in " 'relatively few cases.' " *Id.*

Petitioner fundamentally misunderstands the field of psychotherapy. For the same reasons that classical psychoanalysis requires confidentiality, other, more widely-practiced forms of psychotherapy that also rely substantially on psychoanalytic principles and technique—generally termed "psychoanalytic psychotherapy"—likewise require it.[3] According to a recent survey, psychoanalytic psychotherapy "is the most common form of treatment among mental health professionals and is a highly valued form of treatment." L. Luborsky *et al.*,

[3] Psychoanalytic psychotherapy "is based on fundamental dynamic formulations and techniques that derive from psychoanalysis." 2 H. Kaplan & B. Sadock, *Comprehensive Textbook of Psychiatry* 1783 (6th ed. 1995); *accord* I.H. Paul, *The Form and Technique of Psychotherapy* 9 (1978). However, in contrast to classical psychoanalysis in which the patient generally lies on a couch and sees the analyst for four to five 50-minute sessions per week, the patient and therapist in psychoanalytic psychotherapy generally sit face-to-face (although the couch may, at times, be used), and usually meet for one to three 45- to 50-minute sessions per week. *Id.* at 1779. Psychoanalytic psychotherapies are also more likely to draw, not only on classical psychoanalytic theory, but on other well-established theories as well. *See* A. Bergin & S. Garfield, *Handbook of Psychotherapy and Behavior Change* 181 (4th ed. 1994); 2 H. Kaplan & B. Sadock, *Comprehensive Textbook of Psychiatry* 1770 (6th ed. 1995).

Preface *in Psychodynamic Treatment Research: A Handbook for Clinical Practice* (N. Miller *et al.* eds., 1993).[4] *Amici* have extensive experience in the clinical practice of both classical psychoanalysis and psychoanalytic psychotherapy (collectively, "psychoanalytic therapy"). For the reasons that follow, full disclosure, and hence confidentiality, is an essential ingredient of all psychoanalytic therapy.

Psychoanalytic therapy starts from the premise that the human mind operates on both conscious and unconscious levels. The "conscious" mind consists of those thoughts and feelings of which we are aware. The "unconscious" encompasses those parts of our minds of which we are not aware. Psychoanalytic theory assumes that the conscious concerns and symptoms (*e.g.*, fear, anxiety, depression) that bring a person into psychotherapy are caused, at least in part, by unconscious factors.[5] See C. Brenner, *An*

[4] Officer Redmond appears to have participated in an insight-based form of psychotherapy such as psychoanalytic psychotherapy. Ms. Beyer testified that her principal training was in "psychodynamic" psychotherapy. Dep. of Karen Beyer 61 (July 13, 1992). "Psychodynamic" therapies operate from the premise that "psychopathology is a consequence of repression and a lack and/or avoidance of self-knowledge about how one's mind works . . . . Accordingly, all psychodynamic therapists attempt to help their patients recover and reintegrate those parts of the patient that were lost to the unconscious and attempt to achieve some degree of insight . . . . [A]ll psychodynamic therapists presuppose that people have the capacity to change if they can achieve meaningful mental insight." T. Paolino, *Psychoanalytic Psychotherapy* 17 (1981).

[5] While such difficulties or symptoms might be provoked by a traumatic event such as the shooting incident in which Officer Redmond was involved, psychoanalytic therapy nonetheless assumes that a given individual's reaction to such an event (and individuals may react differently, with some being more troubled than others) largely reflects that person's conscious and unconscious psychological make-up. Thus, a psychoanalytic therapist assisting someone such as Officer Redmond would address both the conscious and unconscious factors that inform her response to the shooting. Such a treatment would likely employ full disclosure as well as the other techniques and principles discussed in this section.

Elementary Textbook of Psychoanalysis 9 (1973) (Freud discovered that "not only hysterical symptoms but also many other normal and pathological aspects of behavior and thinking were the result of what was going on unconsciously in the mind of the individual who exhibited them").

Stated simply, the central goal of psychoanalytic therapy is to help individuals become aware of and/or rework the unconscious factors that (unbeknownst to them) are shaping the way that they think, feel, act or react to a given situation. See D. Louisell, *The Psychologist in Today's Legal World: Part II*, 41 Minn. L. Rev. 731, 746-47 n.56 (1957) ("the very art of successful psychotherapy seems to consist in helping the patient learn for himself the causes of his conduct and the methods of correction").[6] Once this is done, the individual is able to use the abilities of the conscious mind—reason, understanding, intention—to deal better with the unconscious aspects of the mind that were causing the distressing symptoms, behaviors or reactions. In this way, psychoanalytic therapy uses insight to alleviate symptoms. "If a [symptom] can be traced back to the elements in the patient's mental life from which it originated, it simultaneously crumbles away and the patient is freed from it." S. Freud, *The Interpretation of Dreams, in* 4 *Standard Edition of the Complete Psychological Works of Sigmund Freud* 100 (1958) ("*Standard Edition*"). Thus it might be said that "the healing power of psychoanalysis lies . . . in the hoary dictum 'Know thyself.'" J. Kovel, *A Complete Guide to Therapy* 75 (1976).

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[6] The Illinois legislature has recognized that licensed clinical social workers such as Ms. Beyer utilize this principle in their work. Illinois law defines a licensed clinical social worker as one who provides "mental health services for the evaluation, treatment, and prevention of mental and emotional disorders . . . based on knowledge and theory of psychosocial development, behavior, psychopathology, *unconscious motivation*, interpersonal relationships, and environmental stress." Ill. Rev. Stat. ch. 225, para. 20/3 (1994) (emphasis added).

The central challenge of psychoanalytically-based psychotherapy lies in the fact that it is not easy to bring into conscious awareness that which is unconscious. Generally, emotions, thoughts or experiences remain out of consciousness because they are shameful, frightening or otherwise "not acceptable to the patient." American Psychoanalytic Association, *Psychoanalytic Terms and Concepts* 44 (1990); see H. Etchegoyen, *The Fundamentals of Psychoanalytic Technique* 9 (1991) ("things are forgotten if one does not wish to remember them, because they are painful, ugly and disagreeable, contrary to ethics and/or aesthetics"). Individuals develop strong unconscious defenses or "resistances" which function to keep knowledge of these disconcerting thoughts and feelings from becoming conscious. *Id.* To further patients' understanding, the psychoanalytic therapist helps them to overcome these "resistances" using techniques whose prerequisite is a safe, confidential treatment situation. See 1 *Psychiatry: the Personality Disorders and Neuroses* 2 (1985).

Full disclosure (or "free association")—a technique in which the patient is encouraged to say whatever comes to mind no matter how embarrassing, frightening, disturbing or irrelevant it may seem—is the principal method by which the patient and the therapist see beyond the patient's defenses and bring unconscious material into the light of consciousness. It is an essential component of both classical psychoanalysis and psychoanalytic psychotherapy. See *Psychoanalytic Terms and Concepts* at 78 ("[t]he basic procedure of psychoanalysis and psychoanalytic psychotherapy . . . [is that the patient should] express in words all thoughts, feelings, wishes, sensations, images and memories without reservation, as they spontaneously occur. . . . [T]he patient must often overcome conscious feelings of embarrassment, fear, shame, and guilt"). The purpose of full disclosure is *not* to ascertain objective facts or to establish the actual events surrounding a traumatic experience. Rather, the relaxing of the

mind's internal editing allows unconscious material to emerge and to be observed by the psychotherapist and patient.

> The reason for the great value of having the patient relinquish conscious control of his thoughts is this: what the patient thinks and says under those circumstances is determined by *unconscious* thoughts and motives. Thus Freud, by listening to the patient's "free" associations—which were after all free only from *conscious* control—was able to get a picture, by inference, of what was going on unconsciously in his patient's mind.

C. Brenner, *An Elementary Textbook of Psychoanalysis* 9 (1973).[7] The patient's obligation to engage in full disclosure is referred to as the "fundamental rule" of psychoanalytic therapy. *Psychoanalytic Terms and Concepts* at 78.

A threat to the confidentiality of the psychotherapist-patient relationship, such as that which would result from the absence of a privilege, would profoundly impair the ability of a patient to disclose fully the thoughts that come to mind. As mentioned above, the patient must feel free to discuss *anything* with *no* exceptions. Thus, ideas that the patient experiences as shameful or disturbing, even the confidences of third parties, must be shared if they come to mind during the course of the analytic session.[8] In-

[7] The unique window onto the unconscious that full disclosure provides has led some to equate this technique with the microscope or telescope. C. Brenner, *An Elementary Textbook of Psychoanalysis* 8 (1973). Like these other instruments, the patient's free association allows the observer (psychotherapist and patient) to see past the surface to the more profound realities that lie beyond.

[8] The failure to disclose any of these thoughts can serve as a defense against knowledge of the unconscious.

> It is very remarkable how the whole task becomes impossible if a reservation is allowed at any single place. But we have only to reflect what would happen if the right of asylum existed at any one point in a town; how long would it be before all the riff-raff of the town had collected there?

S. Freud, *Further Recommendations on Technique*, in 12 *Standard Edition* 135-36 n.1.

deed, given the oftentimes troubling content of unconscious material (which is, in part, why it remains unconscious), it is precisely the most embarrassing, shameful and displeasing thoughts that a patient *should* express in a psychoanalytic therapy.

"[C]onfidentiality of the material . . . is a prerequisite for free association. No analysand succeeds in divesting himself of all defenses or controls unless he can be certain that the derivatives of his id will not become known beyond the confines of the analytic situation." 4 A. Freud, *The Writings of Anna Freud* 417 (1968); see S.H. Gray, *Quality Assurance and Utilization Review of Individual Medical Psychotherapies, in Manual of Psychiatric Quality Assurance Review* 159-66 (1992) (field data demonstrate that full disclosure depends on confidentiality). Confidentiality is, accordingly, critical to the effective practice of any psychoanalytic therapy. Without it, patients would be reluctant to disclose all that comes to mind and psychoanalytic technique would be severely impaired.

SUMMARY OF THE ARGUMENT

The five factors that the Court should consider in determining whether to recognize a privilege under Fed. R. Evid. 501 decidedly favor recognition of the psychotherapist-patient privilege.

1. Although the widespread adoption of state statutes recognizing the psychotherapist-patient privilege stunted the development of judicial common law dealing with psychotherapist-patient communications, most courts to consider the matter have found that "inviolability of confidence is essential to the achievement of the psycho-

therapeutic goal," *Allred* v. *State*, 554 P.2d 411, 417 (Alaska 1976), and have accordingly recognized the psychotherapist-patient privilege.

2. "Reason and experience" show that confidentiality is essential to effective psychoanalytic therapy and that the societal benefits of such treatments outweigh any adverse impact the recognition of a psychotherapist-patient privilege might have on the truth-seeking function of litigation. Over the past few decades, more and more Americans have sought the documented benefits of psychotherapy. In particular, psychoanalytic therapy can help police officers such as Officer Redmond to face and learn to accept unavoidable violent encounters rather than dealing with them through emotional numbing.

The failure to recognize a psychotherapist-patient privilege would prove disastrous for the effective practice of psychoanalytic therapy. Many who could benefit from psychoanalytic therapy, including police officers, would be deterred from seeking it due to the fear of disclosure in court. Moreover, the threat of disclosure would severely undermine the "therapeutic alliance"—the collaborative relationship between therapist and patient that is essential to any successful psychoanalytic therapy. Finally, the central technique of all psychoanalytic therapy is premised on the patient's willingness to disclose to the therapist all thoughts, feelings, fantasies and dreams that come to mind. The lack of a privilege would destroy the protected atmosphere that makes such communications possible and would, accordingly, seriously impair the efficacy of psychoanalytic therapy.

By contrast, the benefits to litigation from the absence of a privilege are minimal. In most cases parties will have other means (*e.g.*, deposition, trial testimony) of obtaining the patient's version of the facts. Moreover, the patient's disclosures to the therapist are inherently unreliable as evidence since psychoanalytic therapy focuses

not on reconstructing objective facts, but on furthering understanding of the patient's internal reality through fantasies, dreams and imaginings.

3. Every State in the nation recognizes a psychotherapist-patient privilege by statute. See Appendix A. Comity accordingly favors federal recognition of the privilege. To do otherwise would create the risk of inequitable administration of laws and incentives for unseemly "forum shopping" that this Court condemned in *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938).

4. Proposed Rule of Evidence 504, promulgated by the Court in 1972, contained a psychotherapist-patient privilege. While Congress substituted Rule 501 in place of the Court's proposals, these proposals nonetheless serve as guidance and favor recognition of the privilege.

5. Psychoanalytic therapy requires patients to reveal their conscious and unconscious thoughts, feelings, dreams and fantasies no matter how shameful or troubling. Psychoanalytic therapy accordingly implicates the patient's privacy to a greater degree than almost any other human relationship. The Court has consistently construed acts of Congress to avoid raising "difficult and sensitive" constitutional questions. *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 507 (1979). The Court should construe Rule 501 to require recognition of the psychotherapist-patient privilege so as to avoid implicating Officer Redmond's privacy rights. See *Whalen* v. *Roe*, 429 U.S. 589, 599 (1977); *Doe* v. *City of New York*, 15 F.3d 264 (2d Cir. 1994); *United States* v. *Westinghouse Elec. Corp.*, 638 F.2d 570, 577 (3d Cir. 1980).

ARGUMENT

THE COURT SHOULD RECOGNIZE A PSYCHOTHERAPIST-PATIENT PRIVILEGE UNDER FEDERAL RULE OF EVIDENCE 501.

Federal Rule of Evidence 501, which governs federal evidentiary privileges, provides that:

> [e]xcept as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules proscribed by the Supreme Court pursuant to statutory authority, the privilege of a witness . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

Fed. R. Evid. 501.

In applying Rule 501, this Court should consider five factors. First, it should look to "common law" privilege doctrines. *Id.* Second, it should seek to build on these doctrines "in the light of reason and experience."[9] *Id.* Third, "a strong policy of comity" requires federal courts to recognize the privileges established by state law "where this can be accomplished at no substantial cost to federal substantive and procedural policy." *United States* v. *King*, 73 F.R.D. 103, 105 (E.D.N.Y. 1976); see also *United States* v. *Gillock*, 445 U.S. 360, 368 n.8 (1980). Fourth, the proposed privilege rules that this Court promulgated in 1972 but that Congress replaced with the current Rule 501 provide guidance concerning the scope of federal privileges. See *In re Grand Jury Investigation*, 918 F.2d 374, 380 (3d Cir. 1990). Finally, the Court should construe Rule 501 so as to avoid raising "difficult

[9] Congress expressly did not intend Rule 501 to "freeze the law of privilege. Its purpose rather was to 'provide the courts with the flexibility to develop rules of privilege on a case-by-case basis,' and to leave the door open to change." *United States v. Trammel*, 445 U.S. 40, 47 (1980) (quoting 120 Cong. Rec. 40891 (1974) (Statement of Rep. Hungate); H.R. Rep. No. 93-650 at 8 (1973)).

and sensitive" constitutional questions. See *NLRB*, 440 U.S. at 507. In the present case, all five of these factors decidedly favor recognition of the psychotherapist-patient privilege as a matter of federal law.[10]

A. Common law courts have recognized a psychotherapist-patient privilege.

The common law traditionally held as privileged confidential communications between husband and wife, and between attorney and client, on the grounds that the need for frank communication in these relationships outweighed the litigation need for disclosure. See *McCormick on Evidence* 180, 201 (3d ed. 1984).

Judicial development of a comparable common law privilege for psychotherapist-patient communications has largely been truncated by the widespread adoption of State statutes extending privileged status to such communications. See Appendix A. Nevertheless, prior to these State legislative activities, several courts applied the logic underlying the attorney-client and marital privileges and recognized a psychotherapist-patient privilege as a matter of common law.

For example, in *Allred* v. *State*, 554 P.2d 411 (Alaska 1976), the Supreme Court of Alaska considered whether to extend a privilege to defendant's in-custody communications to his drug program coordinator and counselor. The court found that the relationship between a patient and his therapist "is unquestionably one which should be fostered." *Id.* at 417. It further found that confidentiality is essential to the success of psychotherapeutic treatment because "[i]n therapy the patient must often lay bare his entire inner life, including his fantasies,

[10] *Amici* will not focus on the second question presented, regarding the extension of this privilege to licensed clinical social workers, since several other *amici* are doing so. *Amici* favor Respondents' position as to both questions presented.

his past behavior, and his feelings of guilt or shame." *Id.* The Court accordingly concluded that the damage to the psychotherapeutic relationship from fear of disclosure "heavily" outweighed the competing litigation interest in full information. *Id.* at 418. It recognized a psychotherapist-patient privilege as a matter of State common law. *Id.*[11] Other State courts have done the same. See *State* v. *Evans*, 454 P.2d 976 (Ariz. 1969); *Binder* v. *Ruvell*, No. 52-C-2535 (Cir. Ct., Cook Cty., Ill. June 24, 1952), *reported in* 150 J.A.M.A. 1241 (1952) (unpublished decision). Petitioner has cited no countervailing common law authority. The common law favors recognition of the psychotherapist-patient privilege.

B. "Reason and experience" strongly favor recognition of a psychotherapist-patient privilege.

In applying the "reason and experience" prong of Rule 501, courts have relied on four factors enunciated by Dean Wigmore. See, *e.g.*, *United States* v. *Friedman*, 636 F. Supp. 462 (S.D.N.Y. 1986) (adopting Wigmore's formulation). These are:

(1) The communications must originate in a confidence that they will not be disclosed.

(2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

(3) The relation must be one which in the opinion of the community ought to be sedulously fostered.

(4) The injury that would inure to the relation by the disclosure of the communications must be

[11] The court, however, declined to apply the privilege on the facts before it because the communications at issue did not occur during psychotherapy and the drug program coordinator to whom the defendant had spoken was not a psychotherapist. *Allred* v. *State*, 554 P.2d 411, 418-22 (Alaska 1976).

> greater than the benefit thereby gained for the correct disposal of litigation.

8 Wigmore, *Evidence* § 2285 (McNaughton rev. 1961) (emphasis omitted). All four of these factors weigh heavily in favor of recognizing a psychotherapist-patient privilege.

1. As explained above, psychotherapy requires patients to reveal to the therapist the most troubling, unpleasant and shameful aspects of their inner lives. " 'The . . . patient confides more utterly than anyone else in the world . . . . [H]e lays bare his entire self, his dreams, his fantasies, his sins, and his shame." *Taylor* v. *United States*, 222 F.2d 398, 401 (D.C. Cir. 1955) (quoting M. Guttmacher & H. Weihofen, *Psychiatry and the Law* 272 (1952)). Patients make these intimate disclosures with the expectation that they will be held in confidence; indeed, without such an expectation the disclosures would not occur.

Recognizing that such disclosure can only take place in an atmosphere of complete trust and confidentiality, psychotherapists have made it their professional duty to keep the confidences shared with them. For example, the American Psychoanalytic Association's code of professional ethics requires that

> Except as required by law, a psychoanalyst may not reveal the confidences entrusted to him in the course of his professional work, or the particularities that he may observe in the characters of patients. Should he be required by a court of law to give testimony relating to the confidences of his patient, he should make use of all legal means to safeguard his patient's right to confidentiality.

American Psychoanalytic Association, *Principles of Ethics for Psychoanalysts and Provisions for Implementation of the Principles of Ethics for Psychoanalysts* § 6 (1983); accord American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* § 5 (1992);

American Psychiatric Association, *Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* § 4 (1995); National Federation of Societies for Clinical Social Work, *Code of Ethics* § 5 (1988).[12] In sum, the psychotherapist-patient relationship is a highly confidential one and each patient understands this at the commencement of treatment.

2. As discussed above, confidentiality is critical to the success of the psychotherapist-patient relationship in at least three ways. First, many individuals who could benefit from psychotherapy will be deterred from doing so in the absence of a privilege. Second, the therapist's demonstrated willingness to keep the patient's confidence is critical to the establishment of a sound "therapeutic alliance." A threat of disclosure such as that posed in the absence of a privilege will undermine this core precondition of successful treatment.

Finally, the threat of disclosure will interfere with a patient's ability to reveal fully what is on the patient's mind. If, as petitioner argues here, a psychotherapist could be required in a civil action to testify as to the contents of the treatment, patients would be unwilling or unable to engage in psychotherapy's most central technique. Few patients can be expected to lay bare their most private and potentially embarrassing thoughts, wishes and fantasies knowing they may someday be disclosed in civil judicial proceedings. This chilling effect would in turn deny psychoanalytic therapists the uncensored access to their patients' thoughts and feelings that is the *sine qua*

[12] Recognizing the threat to confidentiality posed by the one listed exception (*i.e.*, disclosures required by a court of law), representatives of the various practitioners of psychoanalysis and psychotherapy have successfully lobbied on behalf of numerous State laws that extend a privilege to patient-therapist discussions. For example, a representative of the American Psychoanalytic Association participated in the drafting of the Illinois privilege statute under which Officer Redmond obtained protection from discovery with respect to the State law claims against her.

non of their practice. The effect would be akin to stopping-up the general practitioner's stethoscope or taking away the orthopedist's X-ray machine. Psychotherapy, as a field, would suffer enormously in its ability to help people such as Officer Redmond better to resolve their inner difficulties and thereby become more productive members of society.

3. The confidential relationship between patient and therapist is one society should protect and foster. The past century of rapid economic and social change has subjected many Americans to "unprecedented psychic demands" at the same time as it has isolated them from the kinship, religious and other ties that might, in an earlier era, have offered them support. R. Bellah *et al.*, *Habits of the Heart: Individualism and Commitment in American Life* 119-21 (1985). During this same period, the number of Americans utilizing the mental health professions has increased steadily, more than tripling between 1965 and 1985 alone. *Id.* at 121.

Individuals seek out psychoanalysis and psychoanalytic psychotherapy because these treatments offer important benefits. For example, psychoanalysis and psychoanalytic psychotherapy can help to improve marital relations, work performance and overall social adjustment. A. Bergin & S. Garfield, *Handbook of Psychotherapy and Behavior Change* 148 (4th ed. 1994). They can also help to alleviate specific symptoms such as sleep or eating disorders, anxiety, or depression. *Id.* Individuals who participate in these treatments also commonly experience a sense of liberation from internal inhibitions that results in increased creativity and productivity. 1 *Textbook of Psychiatry* at 473.

These benefits are particularly evident in the area of law enforcement, as this case illustrates. Police officers such as Officer Redmond confront violence, personal tragedy, and danger nearly every working day. This stressful environment may lead to various symptoms in-

cluding emotional numbing and frustration that can interfere with the officer's interaction with community members. See S. Marans, *Community Violence and Children's Development: Collaborative Interventions, in* 11 *The Child in the Family* 109, 117 (C. Chiland & J.G. Young eds., 1994); *cf.* 1 *Textbook of Psychiatry* at 1231-32.

Through psychotherapy, officers such as Officer Redmond can learn to face and accept the strong feelings raised by unavoidable stressful and violent encounters rather than blocking these feelings out. *Id.* at 1235. This will, in turn, help such officers to remain empathetic and effective in their interactions with the community. Officer Redmond's decision to seek treatment in the aftermath of the shooting of Ricky Allen is exactly the sort of response society should encourage and support. Protecting the confidentiality of Officer Redmond's treatment through recognition of a psychotherapist-patient privilege will make it easier for her, and others like her, to seek treatment when they need it.[13] The privilege thereby promotes safer communities and more effective law enforcement, in addition to better adjusted and more productive individuals.

The benefits of psychoanalysis and psychoanalytic psychotherapy are well-documented. Rigorous studies of psychoanalytic treatments conducted by the Menninger Foundation, the Columbia Psychoanalytic Center, the Boston Psychoanalytic Institute and the New York Psychoanalytic Institute between 1954 and 1984 "confirm that patients suitable for psychoanalysis derive therapeutic benefit." H. Bachrach *et al., On the Efficacy of Psychoanalysis,* 39 J. Am. Psychoanalytic Ass'n 871, 911

[13] In the absence of a privilege, on the other hand, a prudent attorney might well advise law enforcement officer clients *not* to seek psychotherapeutic treatment where a wrongful death charge or other legal claim is pending or threatened. Law enforcement officers would face a Hobson's choice between seeking treatment which will increase their legal exposure, or foregoing the benefits of psychotherapy.

(1991). Empirical studies of psychoanalytic psychotherapy have similarly concluded that "a broad range of therapies, when offered by skillful, wise and stable therapists, are likely to result in appreciable gains for the client." A. Bergin & S. Garfield, *Handbook of Psychotherapy and Behavior Change* 180 (4th ed. 1994); see generally, N. Doidge, *Empirical Evidence for the Core Clinical Concepts and Efficacy of Psychoanalytic Psychotherapies: An Overview* (Jan. 1995) (unpublished manuscript). Moreover, a recent Consumer Reports survey of participants in psychotherapy concluded that "[t]he majority . . . were highly satisfied with the care they received. Most had made strides toward resolving the problems that led to treatment, and almost all said life had become more manageable." 60 *Consumer Reports* No. 11 at 734 (Nov. 1995). Psychoanalysis and psychoanalytic psychotherapy thus provide substantial benefits to many Americans and these disciplines ought to be "fostered." 8 Wigmore, *Evidence* § 2285 (McNaughton rev. 1961).

4. The societal benefits promoted by recognition of a psychotherapist-patient privilege outweigh any detriment to the truth-seeking function of civil litigation. Indeed, the balance of benefits to litigation harms is at least comparable to that justifying recognition of the attorney-client privilege. See *Upjohn Co.* v. *United States,* 449 U.S. 383, 389-90 (1981). In *Upjohn,* the Court extended the attorney-client privilege to the communications between a company's attorneys and its executives and managers, including those not in control positions, on the grounds that an attorney must " 'know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out.' " *Id.* at 389 (quoting *Trammel* v. *United States,* 445 U.S. 40, 51 (1980)).

As described above, full disclosure is equally essential to the "professional mission" of the psychotherapist. Indeed, whereas an attorney has other avenues of fact-

gathering (*e.g.* documents), the psychotherapist is limited to his or her patient's full verbal disclosure upon which the entire success of the therapy relies. This therapy, in turn, helps patients, be they law enforcement officers such as Officer Redmond or others, to come to terms with problems that cause them much distress and that they deem too shameful or embarrassing to share with others. Successful therapy benefits not only the psychological and physical health of the patients themselves, but often their friends, families, co-workers and the communities in which they work and live. These benefits are at least as important to society as the promotion of the adversarial relationship.

Moreover, as in the case of the attorney-client relationship, the benefits of recognizing a psychotherapist-patient privilege far outweigh any detriment to the truth-seeking function. First, as this case illustrates, the psyhotherapist-patient privilege generally does not preclude access to the only source of evidence. Officer Redmond testified at trial as to her recollections of the shooting and petitioner had an opportunity to cross-examine her. J.A. 122-67. Moreover, there were numerous eye witnesses to the shooting in addition to Officer Redmond, four of whom testified at trial. Thus, petitioner had ample means of obtaining evidence about the shooting and Officer Redmond's recollection of it, and the discovery she sought with respect to Officer Redmond's confidential communications to her psychotherapist was at best cumulative and duplicative. *Cf.* Fed. R. Civ. P. 26(b)(2).

Second, unlike attorney-client confidences, patient-therapist communications are not necessarily or even likely to be sources of objective evidence. In the attorney-client context, communications are generally aimed at discovering facts that are relevant to the legal issue of concern. Full disclosure in the psychotherapeutic context, by contrast, is not a process concerned with identifying and establishing objective facts but rather a technique designed to

explore the patient's inner perceptions, concerns and difficulties. Patient-therapist confidences, therefore, are generally not reliable sources of "evidence" since they necessarily incorporate feelings and fantasies that, while they have great relevance to the patient's inner life, may bear very little correspondence to external reality.

In sum, the societal benefits that accrue from recognition of the psychotherapist-patient privilege far outweigh the litigation interest in disclosure. Accordingly, "reason and experience" support recognition of the psychotherapist-patient privilege.

C. Every State recognizes a psychotherapist-patient privilege by statute.

Principles of comity require that federal courts recognize the privileges established by State statute "where this can be accomplished at no substantial cost to federal substantive and procedural policy." *United States* v. *King*, 73 F.R.D. 103, 105 (E.D.N.Y. 1976); see also *United States* v. *Gillock*, 445 U.S. 360, 368 n.8 (1980). To do otherwise would create precisely the risk of inequitable administration of the laws and incentives for unseemly "forum shopping" that this Court condemned in *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938). See *Hanna* v. *Plumer*, 380 U.S. 460, 467 (1965).

Every State has recognized a psychotherapist-patient privilege by statute. See Appendix A. Section 110 of the Illinois Civil Liabilities Code is illustrative. It states that, with a few listed exceptions, "in any civil, criminal, administrative or legislative proceeding . . . a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications." Ill. Rev. Stat. ch. 740, para. 110/10(a) (1994).[14] Where

[14] The Illinois statute defines "recipient" as "a person who is receiving or has received mental health or developmental disabili-

State statutes universally embrace a privilege federal courts are generally persuaded to do the same. See, *e.g.*, *In re Doe*, 964 F.2d 1325, 1328 (2d Cir. 1992) (psychotherapist-patient privilege); *In re Grand Jury Investigation*, 918 F.2d 374, 381 & n.10 (3d Cir. 1990) (clergy-communicant privilege). The unambiguous and widespread State statutory support for the psychotherapist-patient privilege weighs heavily in favor of this Court's recognition of such a privilege.[16]

D. This Court recognized the importance of a psychotherapist-patient privilege in proposed Rule 504.

In 1972, this Court promulgated and submitted to Congress twelve privilege rules, nine of which concerned specific privileges. While Congress substituted Rule 501 in place of these proposed rules, they nonetheless "provide a useful reference point and offer guidance in defining the existence and scope of evidentiary privileges in the federal courts." *In re Grand Jury Investigation*, 918 F.2d at 380.

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ties services." Ill. Rev. Stat. ch. 740, para. 110/2 (1994). It defines "therapist" as "a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services." *Id.*

[15] Federal regulatory authorities have also recognized the need for confidentiality with respect to treatments that carry with them social stigmas. For example, Department of Health and Human Service regulations strictly protect the confidentiality of alcohol and drug abuse patient records. *See* 42 C.F.R. § 2.1 *et seq.* (1994). These regulations are intended to promote treatment by "insur[ing] that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment." 42 C.F.R. § 2.3(b)(2) (1994). As discussed above, these same concerns apply in the psychotherapeutic treatment context. These regulations illustrate that recognition of a psychotherapist-patient privilege is consistent with, and can therefore be accomplished at no substantial cost to, federal policy.

Proposed Rule 504 provided for a psychotherapist-patient privilege. It stated that

> [a] patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purposes of diagnosis or treatment of his mental or emotional condition . . . among himself, his psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.[16]

2 J. Weinstein, *Weinstein's Evidence*, ¶ 504-1. The Court's decision to promulgate this rule is "useful in furnishing guidance under Rule 501," *id.*, ¶ 504-3, and provides further support for the privilege.

E. Failure to recognize a psychotherapist-patient privilege would raise "difficult and sensitive" constitutional questions concerning patient privacy.

The Court has recognized that individuals possess a constitutional privacy interest in "avoiding disclosure of personal matters." *Whalen* v. *Roe*, 429 U.S. 589, 599 (1977); accord *Nixon* v. *Administrator of Gen. Servs.*, 433 U.S. 425, 457 (1977). For example, in *Whalen* the Court considered a State of New York policy that required physicians who prescribed Schedule II drugs (such as opium, cocaine or methadone) to provide to the State health department information regarding the drug prescribed and the patient's identity. *Whalen*, 429 U.S. at 593. The Court held that this disclosure of personal medical information implicated the patients' right to privacy, *id.* at 599, although it upheld the program on the ground that the State had taken sufficient security precautions to safeguard this constitutional interest.

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[16] Although Rule 504 defined "psychotherapist" as encompassing only psychiatrists and licensed and certified psychologists, this narrow definition is out-of-date. Many State privilege statutes currently include licensed clinical social workers such as Ms. Beyer. *See* Appendix B.

More recently the Second Circuit, applying *Whalen*, held that individuals possess a privacy right in "intensely personal matter[s]" such as their HIV status, and that an individual could accordingly maintain a Section 1983 action against a State agency that had disclosed his HIV-positive status without his consent. *Doe* v. *City of New York*, 15 F.3d 264, 265 (2d Cir. 1994). The Second Circuit stated that the privacy right to control the disclosure of one's personal matters "can be characterized as a right to 'confidentiality,'" *id.* at 267, and that "the right to confidentiality includes the right to protection regarding information about the state of one's health." *Id.*; accord *United States* v. *Westinghouse Elec. Corp.*, 638 F.2d 570, 577 (3d Cir. 1980).

Officer Redmond's privacy interest in the substance of her conversations with Ms. Beyer is stronger than that implicated in *Whalen* or *Doe*, *supra*. In standard privacy cases such as *Doe*, plaintiffs assert a privacy interest in information that they possess (*e.g.*, HIV status) but do not wish to share with others. Information of this nature is, of course, disclosed in psychotherapy as well. In addition, psychotherapy brings to light information about the unconscious that even the *patients themselves* were not aware of prior to the treatment. Such information emanates from the very core of the patient's personality. " 'The psychiatric patient confides more utterly than anyone else in the world. . . . [H]e lays bare his entire self, his dreams, his fantasies, his sins, and his shame.' " *Taylor* v. *United States*, 222 F.2d 398, 401 (D.C. Cir. 1955) (quoting M. Guttmacher & H. Weihofen, *Psychiatry and the Law* 272 (1952)). To disclose to third-parties personal information that the patient has uncovered through use of the powerful tool of psychotherapy would constitute a more profund invasion of personal privacy than that which implicated the privacy right in *Doe*.

In the absence of a clear expression by Congress, this Court has consistently construed acts of Congress to avoid raising "difficult and sensitive" constitutional questions. *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 507 (1979). In the present case, allowing petitioner to discover the substance of Officer Redmond's communications with Ms. Beyer will profoundly implicate Officer Redmond's privacy rights. See *In re Doe*, 964 F.2d 1325, 1328-29 (2d Cir. 1992); *Caesar* v. *Mountanos*, 542 F.2d 1064, 1067 n.9 (9th Cir. 1976), *cert. denied*, 430 U.S. 954 (1977); *United States* v. *Layton*, 90 F.R.D. 520, 523 (N.D. Cal. 1981); *United States* v. *Brown*, 479 F. Supp. 1247, 1254 & n.8 (D. Md. 1979). This Court should accordingly construe Rule 501 to require recognition of a psychotherapist-patient privilege so as to avoid this intrusion into Officer Redmond's "zone of privacy."

In sum, all five factors to be considered under Rule 501 point strongly towards recognition of the psychotherapist-patient privilege as a matter of federal law.

CONCLUSION

The judgment of the United States Court of Appeals for the Seventh Circuit recognizing a psychotherapist-patient privilege as a matter of federal law should be affirmed.

Respectfully submitted,

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APPENDICES

APPENDIX A

STATE STATUTES RECOGNIZING A PSYCHOTHERAPIST-PATIENT PRIVILEGE

Ala. Code § 34-26-2 (1991); Alaska Stat. § 08.86.200 (1991 & Supp. 1995) & Alaska R. Evid. 504; Ariz. Rev. Stat. Ann. § 32-2085 (1992); Ark. Code Ann. § 17-96-105 (Michie 1992) & Ark. R. Evid. 503; Cal. Evid. Code §§ 1010.5, 1014 et seq. (Deering 1986 & Supp. 1994); Colo. Rev. Stat. § 13-90-107(g) (1987 & Supp. 1995); Conn. Gen. Stat. Ann. § 52-146(c) et seq. (West 1991 & Supp. 1995); Del. R. Evid. 503; D.C. Code Ann. § 14-307 (1995); Fla. Stat. ch. § 90-503 (West 1979 & Supp. 1995); Ga. Code Ann. § 43-39-1 (1994); Haw. Rev. Stat. Ann. tit. 33 § 626-1 (1995) (Ruie 504.1); Idaho Code § 54.2314 (1994); Ill. Rev. Stat. ch. 740, para. 110/10 (1994); Ind. Code § 25-33-1-17 (1993); Iowa Code Ann. § 622.10 (West Supp. 1995); Kan. Stat. Ann. § 74-5323 (1992); Ky. Rev. Stat. Ann. § 421.215 (Michie/Bobbs-Merrill 1992); La. Rev. Stat. Ann. § 13:3734 (West 1991 & Supp. 1995); Maine R. Evid. 503; Md. Code Ann. Cts. & Jud. Proc. § 9-109 (1989 & Supp. 1993); Mass. Gen. L. ch. 233, § 20B (West 1986 & Supp. 1994); Mich. Comp. Laws Ann. § 330.1750 (1992); Minn. Stat. Ann. § 595.02(g) (West 1988 & Supp. 1995); Miss. Code Ann. § 73-31-29 (1989); Mo. Ann. Stat. § 337.055 (Vernon 1989); Mont. Code Ann. § 26-1-807 (1993); Neb. Rev. Stat. § 27-504 (1989); Nev. Rev. Stat. Ann. § 49.215 et seq. (Michie 1986 & Supp. 1993); N.H. Rev. Stat. Ann. § 330-A-19 (1995); N.J. Rev. Stat. § 45:14B-28 (1995); N.M. R. Evid. 11-504; N.Y. Civ. Prac. L. & R. 4507 (McKinney 1992); N.C. Gen. Stat. § 8-53.3 (1995); N.D. R. Evid. 503; Ohio Rev. Code Ann. § 4723.19 (Anderson 1994); Okla. Stat. Ann. tit. 12, § 2503 (West 1993); Or. Rev. Stat. § 40.230 (1988); 42 Pa. Cons. Stat. § 5944 (1982 & Supp. 1995); R.I. Gen. Laws § 5-37.3-6 (1995); S.C. Code Ann. § 44-22-90 (Law. Co-op Supp. 1994); S.D.

Codified Laws Ann. § 19-13-7 (1995) & S.D. R. Evid. 503(b); Tenn. Code Ann. § 24-1-207 (1980 & Supp. 1995); Tex. R. Civ. Evid. 510; Utah Code Ann. §§ 58-61-601 & 58-61-602 (Supp. 1995) & Utah R. Evid. 506; Vt. Stat. Ann. tit. 12, § 1612 (Supp. 1995); Va. Code Ann. § 8.01-400.2 (Michie 1992); Wash. Rev. Code Ann. § 18.83.110 (1989 & Supp. 1995); W. Va. Code § 27-3-1 (1992); Wis. Stat. Ann. § 905.04 (West 1993 & Supp. 1995); Wyo. Stat. Ann. § 33-27-123 (1995).

APPENDIX B

STATE STATUTES RECOGNIZING A SOCIAL WORKER-PATIENT PRIVILEGE

Ariz. Rev. Stat. Ann. § 32-3283 (1992); Ark. Code Ann. § 17-39-107 (Michie 1992); Cal. Evid. Code § 1010-12 (Deering 1986 & Supp. 1994); Col. Rev. Stat. Ann. § 13-90-108(1)(g) (West 1987 & Supp. 1995); Conn. Gen. Stat. Ann. § 52-146q (Supp. 1995); Del. Code Ann. tit. 24, § 3013 (1987 & Supp. 1994) & Del. R. Evid. 503; D.C. Code Ann. § 6-2001 & 2016 (1995); Fla. Stat. ch. 90.504 (1993); Ga. Code Ann. § 24-9-21 (1995); Idaho R. Evid. 518; Ill. Rev. Stat. ch. 225, para. 20/16 (1994); Ind. Code § 25-23.6-6.1 (1993); Iowa Code Ann. § 154C.5 (West 1989); Kan. Stat. Ann. § 65-6315 (1992); Ky. R. Evid. 507; La. Rev. Stat. Ann. § 37:2714 (West 1988 & Supp. 1995) & La. Code Evid. Ann. art. 510 (West 1995); Me. Rev. Stat. Ann. tit. 32, § 7005 (1988); Md. Code Ann. Cts. & Jud. Procs. § 9-121 (1995); Mass. Gen. Laws Ann. ch. 112, § 135A (West 1996); Mich. Stat. Ann. § 18.425 (1610) (Callaghan 1986 & Supp. 1995); Minn. Stat. § 595.02 (1)(g) (West 1986 & Supp. 1995); Miss. Code Ann. § 73-53-29 (1989); Mo. Rev. Stat. § 337.540 (Vernon 1989); Mont. Code Ann. § 37-22-401 (1995); Neb. Rev. Stat. § 71-1,335 (1994); Nev. Rev. Stat. § 49.252 (Michie Supp. 1993); N.J. Stat. Ann. § 45:15BB-13 (West 1995); N.M. Stat. Ann. § 61-31-24 (Michie 1993); N.Y. Civ. Prac. L. & R. 4508 (McKinney 1992); N.C. Gen. Stat. § 8-53.7-8 (1987 & Supp. 1995); N.H. Rev. Stat. Ann. § 330-A.19 (1995); Ohio Rev. Code Ann. § 2315.02(G)(1) (Baldwin 1994 & Supp. 1995); Okla. Stat. Ann. tit. 59, § 1261.1 (West 1989); Or. Rev. Stat. § 40.250 (1993) (Rule 504-4); R.I. Gen. Laws § 5-29.1-4 (1995); S.C. Code Ann. § 19-11-95 (Law. Co-op 1995); S.D. Codified Laws Ann. § 36-26-30 (1994); Tenn. Code Ann. § 63-23-107 (1990); Tex.

R. Civ. Evid. 520; *see* Tex. R. Crim. Proc. 510 (communications in conjunction with drug and alcohol abuse treatment privileged); Utah Code Ann. § 58-60-114 (Supp. 1995) & Utah R. Evid. 506; Vt. R. Evid. 503 (Michie 1992 & Supp. 1995); Va. Code Ann. § 8.01-400.2 (Michie 1992); Wash. Rev. Code Ann. § 18.19.180 (1993 & Supp. 1995); W. Va. Code § 30-30-12 (1993 & Supp. 1995); Wis. Stat. § 905.04 (1993 & 1995 Supp.); Wyo. Stat. § 33-38-109 (1987).